

[REDACTED]

Dear Sir or Madam:

Your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code has been given consideration.

The evidence presented shows that you are an organization formed to mutually share the cost of maintaining the common elements of a condominium. Your members are stockholders in the condominium and are owners of the individual units or apartments therein. Your income is basically from dues and assessments from members, and your expenses include costs associated with your swimming pool, recreational areas, parking lot, building management repairs and operation of all of your facilities.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption of corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code, the organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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Section 1.501(c)(3)-1(b)(4) of the regulation provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or law of the State in which it was created provide that its assets would upon dissolution, be distributed to its members or shareholders.

Section 1.501(c)(3)-1(c)(2) provides in part that an organization is not operated exclusively for one or more exempt purposes if its earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly by such private interests.

It is well established that a purpose or use is not charitable unless it is directed to the public benefit, so that the element of public benefit is a necessary condition of legal charity. (See Bogert, Trust and Trustees, sections 363 and 368 (2d ed. 1959); Scott, The Law of Trusts, section 368 (3d ed. 1967); and Restatement (Second) of Trusts, section 368, comment (b) (1959).) If the purposes or operations of an organization are such that private individuals who are not members of a charitable class receive other than an insubstantial or indirect economic benefit therefrom, such activities are deemed repugnant to the idea of an exclusively public charitable purpose. This result is the same, moreover, even if the purposes and activities of the organization would be charitable were it not for the element of private benefit.

All of your activities are for the benefit of your shareholders and residents of your condominium. There are private individuals who are not members of a charitable class. Moreover, your organization provides them with a direct economic benefit.

Your purposes are not limited to those described in section 501(c)(3) of the Code as required by section 1.501(c)(3)-1(h) of the regulations. In addition, your assets are not dedicated to an exempt purpose as required by the regulations. Accordingly, you do not meet the "organizational test" requirements of that section.

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Your activities are not those described in section 501(c)(3) of the Code and additionally, your manner of conducting business results in inurement of income to individuals. Therefore, you do not meet the "operational test" of that section.

Since you fail to meet the tests described above, you do not qualify as a tax exempt organization described in section 501(c)(3) of the Code.

Based on the information submitted, exempt status will not be recognized under any related paragraph of section 501(c).

Contributions to you are not deductible under section 170 of the Code.

In accordance with this determination you are required to file Federal income tax returns on Form 1120 for each year you have been in existence.

File these returns with this office within 60 days of the date of this letter. We will not delay processing of income tax returns and assessment of any taxes due because of your bringing suit for declaratory judgment under Code section 7428. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

Please note that if you otherwise qualify as a homeowners association, you may benefit by filing income tax returns on Form 1120H.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient District office. If we do not hear from you within 30 days of the date of this letter, this determination will become final and a copy of this letter will be sent to the appropriate state officials in accordance with section 6104(c) of the Internal Revenue Code.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

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